

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2253 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD DIST PANCHAYAT KARAMCHARI MANDAL

Versus

AHMEDABAD MUNIC CORPN

Appearance:

1. Special Civil Application No. 2253 of 1986
MR Saurav Mehta for Mr YN OZA for Petitioner No. 1
MR BP TANNA with Mr Nikhil Kariel for Respondent No. 1
MR Hemang Raval for A D Oza, for respondent no.2
Mr K G Sheth, AGP for Respondent No. 3
NOTICE SERVED for Respondents No. 4-5
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 05/11/2001

ORAL JUDGEMENT

The petitioner above named is a Class IV employees Union of Ahmedabad District Panchayat. It has filed this petition under Article 226, 14 and 16 of the Constitution of India for appropriate writ, order or direction, directing the first and second respondents to absorb five Jr. clerks, three Education Inspectors and three Sr.Clerks in its regular services on the basis of the strength of 938 Teachers who have been absorbed in the services of the second respondent. The facts may be briefly stated as follows:

2. The petitioner, as said above, is a Union of Class III employees of the Ahmedabad District Panchayat. According to the case of the petitioner, on 22.2.1986, the Government of the State of Gujarat had issued a Notification by which the limits of Ahmedabad Municipal Corporation were extended on the eastern side for making greater Ahmedabad. On account of the said Notification and the extension of the limits of the Ahmedabad Municipal Corporation, several parts of Gram Panchayat and Nagar Panchayats have fallen into the limits of Ahmedabad Municipal Corporation (hereinafter referred to as 'the Corporation'). That on account of the above position, certain Schools run by the Panchayats have come under the limits of the Corporation. That therefore, the Teachers working in those Schools were taken up and absorbed in the service of the Corporation. That at the same time, the clerical staff working in those Panchayat Schools have not been simultaneously absorbed in the services of the Corporation. The petitioner has contended that on account of the aforesaid extension of limits of the Corporation, 938 Teachers working in Panchayat Schools have been absorbed in the service of the Corporation whereas five Jr.Clerks, three Education Inspectors and three Sr.Inspectors working in the establishment of those Panchayat Schools have not been absorbed though according to the norms and workload, they were required to be absorbed in the service of the Corporation considering the absorption of 938 teachers working in those Panchayat Schools who have been absorbed already by the Corporation. The petitioner contends that it is discriminatory on the part of the respondents since the Corporation has already absorbed the Teachers leaving aside the clerical staff. Therefore, the petitioner has come forward with this petition with the aforesaid prayer that those persons may be directed to be absorbed in the service of the Corporation.

3. On receipt of the aforesaid petition, rule was issued and temporary relief was also granted but it seems to have been modified from time to time. Rule was duly

served and appearance has been made on behalf of the respondents. The matter was mainly argued by Mr Saurav Mehta, learned Advocate on behalf of Mr Yatin Oza on behalf of the petitioner. Mr B P Tanna, learned Sr. Advocate with Mr Nikhil Kariel, learned Advocate appeared on behalf of respondent no.1. The matter has been contested by filing affidavit by and on behalf of respondent No.2. The affidavit-in-reply filed by Umakant C Tripathi-respondent No.2 has been placed at page 20. The main contention in this affidavit is that as per the Resolution of the Education and Labour Department of the Government of the State of Gujarat under reference placed at page 23, only Teachers were required to be absorbed in the service of the School board. That in view of the said position, the question of absorbing non-teaching staff or Education Inspectors does not arise. The affidavit further shows that by letter dated 21.4.1986 the Dy. Director of Primary Education, Gandhinagar has informed the District Primary Education Officer that the post of Education Inspectors may be handed over to the District Education Officer and in view of this letter also it was amply clear that such Inspectors were not required to be absorbed in the Municipal School Board or Corporation. That therefore, the petition is without any merit and requires to be dismissed. I have heard the learned Advocates for the parties and have perused the papers.

4. Since the contesting respondents have depended upon the Government Resolution, it would be important and relevant to consider the same. There is no dispute that the parties are governed by this Resolution. It is also undisputed that if, under this Resolution, the petitioner is entitled to the relief, then the relief has to be granted to the petitioner. On the other hand, if it is found that under this Resolution, the petitioner is not entitled to any relief, then the petition is naturally required to be dismissed. Therefore, this court has to consider the said Resolution placed at page 23.

5. On a reference to this Resolution at page no.23, learned, learned Advocate appearing for the contesting respondent has argued that only Teachers were required to be absorbed, but the Resolution does not speak of absorption of clerical staff. On a bare perusal of the said Resolution at page 23, it is not possible for me to agree with the said argument advanced on behalf of the contesting respondent by their learned Advocates. One can find from para no.2 of the said Resolution that it relates to the handing over of staff including Teachers, clerks and Education Inspectors. This means that the

Resolution includes and covers Clerks and Education Inspectors. It goes without saying that it cannot be argued on the strength of this Resolution at page 23 that it covers only the Teachers and not the clerical staff. Then in the said para, it is further stated that the posts of Clerks are required to be handed over by the District Panchayat, Taluka Panchayat or Nagarpanchayat as the case may be, to the Municipality. That means that the Clerks are required to be transferred from the District Panchayat, Taluka Panchayat or Nagarpanchayat to the establishment of the Municipality. It may be Nagarpalika or it may be Municipal Corporation. It is made clear that when the word Nagarpalika is used, which has been mentioned in this Government Resolution at page 23, it includes Municipal Corporation also. Therefore, when the matter relates to a Nagarpalika constituted under the Gujarat Municipalities Act then the posts will be required to be transferred to such Municipalities. Same way, if it is a matter of Municipal Corporation, then the clerical posts will be required to be transferred to the establishment of the Corporation. Then, as to the number of posts to be transferred to the Municipality or Municipal Corporation, as the case may be, it has been mentioned in this para 2 of this G.R. at page 23 which clarifies as to how the posts are required to be transferred and what would be the number of posts to be transferred as above. The resolution further makes it clear that as and when the posts are transferred as above, such posts would carry pay, D.A. etc. also.

6. The Government Resolution further states that options are required to be invited and, therefore, if a particular clerical staff member does not want to go to the Municipal service, then in that case, last come first go principle will be applied and such persons at the bottom will be required to be retrenched. In the alternative, they may be accommodated elsewhere. The Government Resolution, thus makes provision for absorption of clerical staff in the employment of the Ahmedabad Municipal Corporation and, therefore, the clerical staff mentioned in this Government Resolution is required to be transferred from the Panchayat service to the Municipal service after following due procedure laid down in this Government Resolution. Mr B P Tanna, learned Sr. Advocate has argued at length that it would be necessary to call for options and it may not be possible for the Corporation to absorb all the staff members working on clerical side in those Panchayat Schools. I find no difficulty in accepting the said argument. This clerical staff is required to be transferred from Panchayat to Municipal Services in accordance with the

directions given in the above referred Government Resolution. Moreover, options are required to be invited. The persons opting for municipal service will naturally be required to be transferred on the establishment of Municipal service. This Court is not concerned with respect to the persons who do not opt for municipal service. Therefore, what procedure is required to be followed with respect to those persons not opting for municipal service will not be relevant for consideration in this matter. Therefore, it is amply clear that the Government Resolution referred to hereinabove and placed at page 23 clearly provides for transfer of clerical staff from Panchayat service to Municipal service. It provides as to how many persons are to be transferred as above. It also provides as to how the transfer of clerical staff is required to take place. In other words, the entire procedure has been provided in this resolution. In above view of the matter, it cannot be said that this Resolution does not provide for transfer of clerical service from Panchayat service to Municipal service. Therefore, the said contention advanced by the contesting respondent, cannot be accepted.

7. Once it is found that the Resolution at page 23 is applicable to the facts of the case before us, then there is no alternative but to allow the petition and direct the respondents to transfer the service of clerical staff from the Panchayat to the Municipal Corporation service in accordance with the provisions and procedure envisaged in this Government Resolution. Mr B P Tanna, Sr. Advocate has argued on behalf of the contesting respondents that if the petition is allowed then in that case, it would be necessary for the Court to direct that options may be invited and the procedure may be followed. When we say that the transfer of clerical staff from Panchayat service to Municipal Corporation service and absorption of those persons in Municipal Corporation is to take place in accordance with the Government Resolution placed at page 23, then it goes without saying that the entire procedure laid down in para 2 of the Resolution will be required to be followed while transferring clerical staff from Panchayat service to Municipal service. It would also be required to be directed that those persons be absorbed in the service of the Corporation. It is also required to be directed that the above process will be undertaken in accordance with the procedure envisaged in the said Resolution at page 23. It has been brought to my notice that the District Education Committee of respondent no.4-Ahmedabad District Panchayat had addressed a letter dated 5.3.1986 at

Annexure 'A' at page 13 to the Ahmedabad Municipal Corporation being respondent no.1 informing the Corporation that seven persons working on the clerical side in the schools run by the Panchayats were required to be absorbed in the service of respondent No.1-Ahmedabad Municipal Corporation. During the course of the argument it was made clear that out of the above seven persons named in the said letter, Mr M U Panchal at Sr.No.1 has passed away and the two persons at sr. nos. 5 and 6 have already retired from service on account of attaining superannuation age. It is further made clear that the Education Inspector shown at sr.no.7 has obtained voluntary retirement from the service. Any way, things are clear that the Government has laid down a policy for absorption of the clerical staff also from Panchayat service to the Municipal Corporation Service and, therefore, the petition succeeds to that extent.

8. For the foregoing reasons, this petition is partly allowed and the respondents are directed to transfer and absorb the clerical staff from the establishment of the Panchayat Schools to the establishment of the Municipal Corporation service in accordance with the proportion, procedure and guidelines mentioned in the Government Resolution issued by the Education and Labour Department of the Government of the State of the Gujarat No.PRE-1865-85163-K placed at page 23 to the petition.

Rule is made absolute to that extent. Having regard to the facts of the case, no order as to costs.

Date:5.11.2001 [D P Buch, J.]

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